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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/617,065
Filing Date: July 13, 2000
Appellant(s): UNDERSTEIN, NORMAN

Alan M. Kagen
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1/7/2008 appealing from the Office action mailed 9/27/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,794,207	Walker et al.	8-1998
6,240,396	Walker et al.	5-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

A. Claims 1-9 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. Patent 5,794,207 to Walker et al.

Walker clearly sets forth a method of qualifying a participant over a global network in a transaction requiring a transfer of funds from the participant using a qualifying system (see for example, the ABSTRACT), the method comprising:

(a) the participant establishing a consumer funding account by depositing funds in the consumer funding account, the consumer funding account to be administered by the qualifying system (see for example, Col. 9 lines 31-40 and Columns 21 and 22);

(b) the participant entering a transaction requiring a transfer of funds from the participant to a vendor (see for example, Col. 16 lines 62+);

(c) the qualifying system reserving a portion of the consumer funding account according to a transaction parameter determined by at least one of the qualifying system, the participant or the vendor (see for example, Col. 17 lines 34-35); and

(d) the qualifying system qualifying the participant for the transaction if the consumer funding account satisfies conditions of the transaction parameter, (see for example, Col. 17 lines 27-47).

Regarding claim 2 and the limitation wherein the transaction parameter is a required deposit, see for example, Col. 7 lines 47-50, Col 22 lines 20-23, etc.

Regarding claim 3 and the limitation wherein the transaction parameter is an amount of funds required to complete the transaction see for example, Col. 7 lines 47-50, Col 22 lines 20-23, etc.

Regarding claim 4 and the method of qualifying a participant over a global network in a transaction requiring a transfer of funds from the participant using a qualifying system, the method comprising:

(a) the participant establishing a consumer funding account by depositing funds in the consumer funding account, the consumer funding account to be administered by the qualifying system,

(b) the participant entering a transaction requiring a transfer Of funds from the participant to a vendor;

(c) the qualifying system reserving a portion of the consumer funding account according to a transaction parameter determined by at least one of the qualifying system, the participant or the vendor, wherein step (c) is practiced by reserving a first portion of the consumer funding account corresponding to a required deposit and reserving a second portion of the consumer funding account corresponding to an amount of funds required to complete the transaction and

(d) the qualifying system qualifying the participant for the transaction if the consumer funding account satisfies conditions of the transaction parameter.

Regarding claim 5 and the limitation releasing the reserved portion of the consumer funding account when the transaction is completed, see for example, col. 22 lines 20-23, Col. 20 line 49 through Col. 23 line 5, ESPECIALLY COL. 20 "THESE PAYMENT METHODS ARE MEANT TO BE MERELY ILLUSTRATIVE, HOWEVER , AS THERE ARE MANY EQUIVALENT PAYMENT METHODS COMMONLY KNOWN IN THE ART WHICH MAY BE USED".

Regarding claim 6 and the limitation wherein step (c) is practiced by querying a network website server that maintains the consumer funding account, see for example, Col. 10 lines 8-17.

Walker clearly discloses claims 7 and 8, i.e. a computer system and computer program embedded on a medium for effecting qualifying of a participant over a global network in a transaction requiring a transfer of funds from the participant to a vendor, the computer system comprising: at least one user computer running a computer program that requests information according to a transaction inquiry input by the participant; and a system server running a server program, the at least one user computer and the system server being interconnected by a computer network, the system server determining whether the participant has

established a consumer funding account by depositing funds in the consumer funding account, and if the participant has established the consumer funding account, the system server reserving a portion of the consumer funding account according to a transaction parameter determined by at least one of the system server, the participant or the vendor, wherein the system server administers the consumer funding account, and wherein the system server qualifies the participant for the transaction if the consumer funding account satisfies conditions of the transaction parameter., in the rejection of corresponding parts above as well as Col. 17 lines 53+, Col. 10n lines 8-17, etc.

Walker clearly discloses claim 9, i.e. a method of qualifying a participant over a global network in a transaction requiring a transfer of funds from the participant using a qualifying system, the method comprising:

- (a) the participant entering a transaction requiring a transfer of funds from the participant to a vendor;
- (b) the qualifying system determining whether the participant has established a consumer funding account, wherein if the participant has not established the consumer funding account, the qualifying system providing the participant an opportunity to establish the consumer funding account, the consumer funding account to be administered by the qualifying system (see for example, Col. 8 line 67 through Col. 9 line 5 and Col 13 lines 1-10);

- (c) after establishing the consumer funding account, the qualifying system continuing with the transaction;
- (d) the qualifying system reserving a portion of the consumer funding account according to a transaction parameter determined by at least one of the qualifying system, the participant or the vendor; and
- (e) the qualifying system qualifying the participant for the transaction if the consumer funding account satisfies conditions of the transaction parameter in the rejection of corresponding parts of claims 1 and 4 above.

B. Claims 1-9 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. Patent 6,240,396 B1 to Walker et al.

'396 Walker incorporates the '207 Walker patent by reference in the first paragraph found in Col. 1 lines 5-15, therefore claims 1-9 are rejected for AT LEAST the same reasons given above in section 10.

Regarding claim 5, If appellant is of the opinion that the '207 Walker patent does not inherently include said limitation, then resort may be had to '369, Col. 8 lines 10-15 to show it is known in the art to reserve portions of accounts during transactions and refund said reservation once the transaction has been completed.

(10) Response to Argument

A. Appellant argues on Pages 15 and 16:

"Walker does not disclose an account that is administered by its system and that is established by depositing funds therein, wherein the system reserves a portion of the account according to a transaction parameter. The Examiner's reference to equivalent payment methods is irrelevant to the claimed reservation of a portion of the consumer funding account since, as discussed previously, actual payment or transfer of funds is readily distinguishable from the claimed system for qualifying a participant in a transaction. Indeed, the qualification in fact typically enables participation in the transaction without necessarily including any funds transfer. The Examiner's repeated references to "payment methods" in Walker evidences a misunderstanding of the claimed invention. Walker does not disclose the use of an account administered by its system, nor does Walker disclose a system wherein funds are reserved in an account administered by its system according to a transaction parameter to qualify a participant in a transaction. Related subject matter is defined in independent claims 4 and 7-9 (discussed in more detail below). For at least these reasons, Appellant respectfully submits that the rejection is misplaced."

RESPONSE:

Not only does Walker disclose an account that is administered by its system and that is established by depositing funds therein, but also Walker also teaches that there are many different and equivalent payment methods commonly known in the art. See for example Col. 21 lines 1-10,

"At step 1330, central controller 200 establishes buyer account 297 which either stores money transferred by the buyer or serves as a pointer to an account of the buyer outside the system...Buyers could also transfer money to central controller 200 to be stored in buyer account 297 which would operate like a conventional checking account."

Clearly, Walker does indeed disclose and teach an account administered by it's system.

Regarding the limitation "wherein the system reserves a portion of the account according to a transaction parameter", resort may be had to Col. 17 lines 27-49 ("payment processor...submits a preauthorization...this serves to lock up a portion of the available credit (also known in the art as available balance) on the buyer's credit card (known as a consumer funding account)"). It must be understood that the use of a "credit card" account is merely ONE example of an account that may be used for the reservation. The teachings of the credit card account are equally applicable to ANY other account that may be substituted in its place. Again, as clearly set forth above, the system of Walker either stores money transferred by the buyer OR has as a pointer to an account of the buyer outside the system. Walker clearly discloses locking up a portion of an account in order to preauthorize a transaction and DOES NOT REQUIRE THE ACTUAL TRANSFER OF FUNDS as alleged by appellant. The fact that Walker does transfer the funds is merely an additional step that is not excluded from appellant's claims as the claims merely "comprise" certain steps but may contain others as they are currently open ended.

Further, the preambles of all of the claims currently state that the transaction REQUIRES A TRANSFER OF FUNDS.

There are many teachings within Walker. Walker clearly sets forth many different methods of "pre-authorization", "payment", "partial payment", etc. See

for example, Figure 6. Step 620 is checking to see if Sufficient credit is available. This is qualifying a participant in the transaction, because if the account does NOT have sufficient credit (funds) the transaction fails. Again, it is immaterial WHICH account has been disclosed specifically within Walker as the "funding account" as the teachings would be applicable to ALL ACCOUNTS, regardless of where they are administered or what type of account they are.

B. Appellant argues on page 17:

1. "With regard to independent claim 4, although the Office Action essentially reprints the content of claim 4, the Office Action does not reference a single teaching in Walker that purportedly meets the claimed subject matter. The Office Action in fact does not even argue that the subject matter of claim 4 is anticipated in Walker '207."

2. "Additionally, claim 4 recites that step (c) is practiced by reserving a first portion of the consumer funding account corresponding to a required deposit and reserving a second portion of the consumer funding account corresponding to an amount of funds required to complete the transaction. In addition to lacking any reference to reserving any amount of a funding account, Walker lacks a teaching of reserving first and second parts of a consumer funding account as claimed."

RESPONSE:

Regarding element 1 above, it is noted that the Office action is indeed silent with regard as to how Walker explicitly reads on the claim due to a typographical mishap deleting the last line containing specific locations where the claim limitations could be found between the response to claim 4 on page 5 and claim 5 on page 6 of the 9/27/2007 Office action. Claim 4 was clearly indicated as rejected over Walker in the statement of rejection set forth in section 10 on

page 3 of said Office action AND as the Examiner stated in section 8 of said Office action, Appellant was notified that the Examiner cited particular columns and line numbers for the convenience of Appellant and further requested Appellant to consider the references in their ENTIRITY for teaching the claimed invention.

Regarding element 2, Walker does indeed disclose reserving a first portion of the consumer funding account corresponding to a required deposit and reserving a second portion of the consumer funding account corresponding to an amount of funds required to complete the transaction in for example Col. 17 lines 30-34 "...payment processor submits a preauthorization...This serves to lock-up a portion of the available credit", Col. 22 lines 20-23 "the buyer makes a partial payment (reserving a first portion)...and then completes payment (reserving a second portion)...", etc.

Another way to look at Walker is that Walker also discloses reserving a first portion of the consumer funding account corresponding to a required deposit, wherein it is understood that establishing an account by depositing money is indeed "reserving a first portion of the consumer account corresponding to a required deposit" because the money is "reserved" within the account after it is deposited, i.e. it stays there reserved for later use and it is a required deposit because a deposit is required in order to open an account. The limitation reserving a second portion of the consumer funding account corresponding to an

amount of funds required to complete the transaction reads on the actual preauthorization (lock-up) of funds discussed previously above.

C. Appellant argues on page 17:

"Claim 5 defines a step of releasing the reserved portion of the consumer funding account when the transaction is completed. The sections referenced in the Walker patent relate to payment preferences, which as noted above, are irrelevant to the claimed reservation of a portion of a consumer funding account. Claim 5 expands on the notion that the qualifying system is distinguishable from a transfer of funds since the reserved portion is released [so as to be accessible by the consumer] when the transaction is completed (rather than being transferred to the seller - although the account could be used to transfer funds according to user preferences)."

RESPONSE:

The language of Claim 5 requires that the reserved portion of the consumer funding account be released but does NOT explicitly disclose exactly how, where or to whom. One reasonable interpretation of the limitation "releasing the reserved portion" would be that the portion is actually released as payment.

Walker clearly teaches releasing the reserved portion of the consumer funding account in for example, col. 22 lines 20-33 "central controller releases this portion of funds...and then releases the remaining portion.."

Again, as explained previously above, Walker clearly sets forth both "reserving" AND "paying" portions of consumer funding accounts, accordingly the teachings can and should be universally applied to each and every type of

Art Unit: 3694

account since Walker clearly discloses that many different payment options (i.e. account types) are well known in the art.

D. Appellant argues on page 18:

"With reference to claim 6, the bonding agency referenced in the Walker '207 patent serves to verify buyer and seller ability to pay or deliver goods but does so via access to a third party source. In the example described in Walker '207, the system accesses the buyer's credit card issuer via a credit card clearinghouse. The subject matter of claim 6 is thus also lacking in Walker."

RESPONSE:

Walker , clearly discloses claim 6 in, for example Col. 10 lines 8-17, and Col. 21 lines 1-5. Appellant's arguments are untenable as Walker clearly teaches that it is the central controller that manages the account and is accessible via the web. See also Col. 8 line 45 "A buyer...accesses the central controller located at a remote server."

E. Appellant argues on page 17:

"nowhere does Walker describe a consequence when a participant to a transaction has not established an account with the system. Fig. 13 in Walker illustrates a protocol in which the central controller 200 establishes a buyer account 297. Walker is silent with regard to a participant that attempts to enter a transaction requiring qualification without an account registered with the system.

RESPONSE:

Appellant's arguments are simply untenable. Firstly, there seems little use for a system that does NOT allow users to use it by preventing them from

establishing an account if they do not have one. Accordingly it is considered that this limitation would be inherent to Walker, otherwise no one would ever be able to use it because no one could enter a new account. Secondly Walker does indeed teach allowing people to set up accounts that do not have one in, for example, Col. 13 lines 1-10 wherein it is clearly disclosed that "Buyer database 255 maintains data...This information is obtained when the buyer first registers with the system, or immediately prior to posting his first CPO." Clearly the information must be entered into the system somehow, either in the beginning or immediately prior to using the system.

F. Appellant argues on pages 19-20:

"With regard to reserving portions of accounts, the Examiner references Walker '396 at col. 8, lines 10-15. As noted, however, reservation of a consumer's credit line does not anticipate the subject matter of the claimed invention, wherein a qualifying system reserves a portion of a consumer funding account that is administered by the qualifying system and that is established by depositing funds in the consumer funding account. A credit card is rather administered by the credit card issuer, and reservation of a portion of a consumer's credit line does not anticipate reserving a portion of the claimed consumer funding account."

RESPONSE:

Walker '396 incorporated Walker '207 by reference in Col. 1 lines 5-15. Therefore as explained above, Walker '207 CLEARLY discloses that the consumer funding account can be MANY different kinds of accounts. It makes no difference what type of account would be used as the source of funding,

Art Unit: 3694

Credit cards, accounts administered by the system or some other accounts outside the system, they all work the same way, i.e. a source of funds.

Walker '396 clearly discloses "reserving a portion" in Col. 10 lines 56-57. Again, reserving a portion of credit is nothing more than reserving a portion of funds of an account. It is immaterial what type of account or where it is administered, the teachings remain the same. Further support for the Examiners statements may be found in, for example, Col. 17, Claim 1 wherein the limitation "credit card" is void. Claim 1 requires a **general purpose account** number which is clearly generic to a credit card or ANY OTHER type of account.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Daniel L Greene Jr./

Examiner, Art Unit 3694

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Art Unit: 3694

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